KLR  
#1Taxpayer Bill of Rights and *De Minimis* “Apology” Payment

## Problem

The United States tax system is based on a social contract between the government and its taxpayers – taxpayers agree to report and pay the taxes they owe and the government agrees to provide the service and oversight necessary to ensure that taxpayers can and will do so. Without that unspoken agreement, tax administration in a modern democratic society could not function. Thus, the government’s ability to raise revenue through voluntary tax compliance – the most efficient and economical form of tax compliance – rests on taxpayers’ belief that the government will honor its end of the social contract.<sup>1</sup>

The National Taxpayer Advocate believes that it is in the best interests of taxpayers and tax administration for this unspoken agreement to be articulated in a formal Taxpayer Bill of Rights. Although Congress, in three major pieces of legislation, has expressly identified numerous rights that are crafted to ensure a fair and just tax system and protect all taxpayers from potential IRS abuse, there is no single document that sets forth these rights in simple, clear language.<sup>2</sup>

Taxpayer rights do not exist in a vacuum. That is, a tax system that embeds rights also expects its taxpayers to conduct themselves in such a manner as to ensure those rights are not abused. To this end, the Taxpayer Bill of Rights should incorporate not only a clear statement of taxpayer rights but also a statement of taxpayer obligations.<sup>3</sup> Moreover, since the U.S. tax system is a mature system, the rights and obligations articulated in the Taxpayer Bill of Rights should be generally derived from provisions that are already part of the tax laws or procedures.

Further, as federal tax laws and procedures become more complex and as the IRS becomes more compartmentalized, the likelihood increases that the IRS will make mistakes and cause delays in taxpayer issue resolution, and that such mistakes and delays could harm taxpayers. A fair and just tax system should acknowledge those mistakes and delays, and where such situations cause excessive expense or undue burden on the taxpayer, make

<sup>1</sup> We use the term “voluntary” tax compliance here to draw a contrast with enforced tax compliance. It is far more expensive for the government to raise revenue if it must audit taxpayers one at a time and then initiate legal action to compel the payment of tax or impose levies or liens against a taxpayer’s property. Frequent resort to enforced compliance is also bad for our civic culture. The government fares best in performing its tax collection responsibilities if it perpetuates the social contract and demonstrates clearly its desire and ability to uphold its end of the bargain.

<sup>2</sup> See Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342 (1988) (containing the Taxpayer Bill of Rights); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996); and Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998).

<sup>3</sup> *Taxpayers’ Rights and Obligations – Practice Note*, OECD Centre for Tax Policy and Administration, August 2003, 3 at <http://www.oecd.org/dataoecd/4/16/14990856.pdf>.



a *de minimis* “apology” payment. There exists today no such remedy under the Internal Revenue Code.

### Example

The IRS assessed a liability on a taxpayer for an incorrect tax year based on an item of income the taxpayer was entitled to exclude from gross income. The IRS has since levied the taxpayer’s wages, lost the audit reconsideration request the taxpayer filed, and determined the audit reconsideration appeal period has expired in spite of the IRS’s own error in processing the request. Over an extended period of years the taxpayer secured a power of attorney and sought TAS assistance in an attempt to rectify the initial IRS mistakes. The taxpayer is no longer able to work due to declining health, and has spent years and incurred a significant cost burden trying to resolve these tax issues, but to no avail. With time having passed, the taxpayer spending money to rectify the problem, and multiple errors on the part of the IRS, simply returning the erroneously levied wages will not make the taxpayer whole. In such a situation, the National Taxpayer Advocate believes an apology payment would be appropriate.<sup>4</sup>

### Recommendation

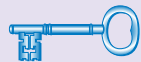
#### Recommendation 1: Taxpayer Bill of Rights

The National Taxpayer Advocate recommends that Congress enact a Taxpayer Bill of Rights that sets forth the fundamental rights and obligations of U.S. taxpayers, as follows:

#### *Taxpayer Rights include:*

- Right to be Informed (including adequate legal and procedural guidance and information about taxpayer rights)
- Right to be Assisted
- Right to be Heard
- Right to Pay No More than the Correct Amount of Tax
- Right of Appeal (administrative and judicial)
- Right to Certainty (including guidance, periods of limitation, no second exam, and closing agreements)
- Right to Privacy (including due process considerations, least intrusive enforcement action, and search and seizure protections)
- Right to Confidentiality
- Right to Representation

<sup>4</sup> Taxpayer Advocate Management Information System (TAMIS).



- Right to Fair and Just Tax System (Offer in Compromise, Abatement, TAS, Apology and other compensation payments)

#### *Taxpayer Obligations include:*

- Obligation to be honest
- Obligation to be cooperative
- Obligation to provide accurate information and documents on time
- Obligation to keep records
- Obligation to pay taxes on time

Congress should require the Secretary to publish these fundamental rights and obligations in a document that also links specific statutory protections to the Taxpayer Bill of Rights.

#### **Recommendation 2: *De Minimis* Apology Payments**

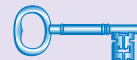
The National Taxpayer Advocate also recommends that Congress amend Internal Revenue Code (IRC) § 7811 to grant the National Taxpayer Advocate the discretionary, nondelegable authority to compensate taxpayers where the action or inaction of the IRS has caused excessive expense or undue burden to the taxpayer, and the taxpayer meets the IRC § 7811 definition of significant hardship.<sup>5</sup> Discretionary payments should range from a minimum of \$100 up to a maximum of \$1,000, indexed for inflation.

Unless otherwise provided by specific appropriation, authorize the Secretary of the Treasury to allocate no more than \$1 million per year to “apology” payments.

Amend IRC § 7803(c)(2)(B)(ii) to require the National Taxpayer Advocate to include in her Annual Report to Congress a section summarizing the awards made under this amendment.

Amend the Code to exclude these “apology” payments from gross income.

<sup>5</sup> IRC § 7811(a)(2).



## Present Law

### Recommendation 1: Taxpayer Bill of Rights

The Internal Revenue Code does not currently contain a concise and explicit list of taxpayer rights and obligations. However, Congress has enacted specific provisions that are crafted to ensure a fair and just tax system and protect all taxpayers from potential IRS abuse.<sup>6</sup> Moreover, scattered throughout the Code are specific obligations imposed on taxpayers.<sup>7</sup>

Prior to the enactment of the original Taxpayer Bill of Rights (TBOR 1), there was no statutory requirement that the IRS provide a written explanation of the rights of the taxpayer and the obligations of the IRS during the tax dispute resolution process. The TBOR 1 added a specific requirement that the IRS, when it contacts a taxpayer concerning the determination or collection of any tax, explain in writing and in simple, nontechnical terms the rights of the taxpayer and the obligations of the IRS during the audit, appeals, refund, and collection processes.<sup>8</sup> Currently, the IRS informs taxpayers of these rights by outlining them in Publication 1, *Your Rights as a Taxpayer* (“Pub. 1”).<sup>9</sup>

In 1988, the Organization for Economic and Co-operation Development (OECD) sent out a questionnaire to its member countries asking about their system of taxpayer rights and obligations. OECD published the results of the survey in 1990.<sup>10</sup> The survey found that although most countries did not have an explicit charter or bill of rights, there were certain basic rights present in all tax systems that responded:

- The right to be informed, assisted, and heard;
- The right of appeal;
- The right to pay no more than the correct amount of tax;
- The right to certainty;
- The right to privacy; and
- The right to confidentiality and secrecy.<sup>11</sup>

<sup>6</sup> See, e.g., IRC § 7605(b) (a taxpayer’s books and accounts can only be inspected once each tax year); IRC § 7602(e) (IRS agents shall not use financial status or economic reality examination techniques to determine if the taxpayer has unpaid income); Circular 230, 31 C.F.R., Part 10, (A taxpayer may retain an approved tax practitioner, which includes an attorney, CPA, or enrolled agent, to represent him or her before any part of the IRS); IRC § 7521(a)(1) (the taxpayer may conduct an audio recording of an in-person interview with an IRS agent regarding determination or collection of tax); IRC § 6103 (providing for confidentiality of taxpayer and tax return information); IRC § 6330 (requiring IRS, among other things, to provide notice of levy setting forth the amount of unpaid tax, and the right to request a Collection Due Process hearing); IRC § 6343(a) and (e) (addressing release of levy and notice of release); IRC § 6325(a) and (b) (addressing releases of liens and discharge of property); IRC § 6323 (addressing withdrawal of lien); IRC §§ 6343(b) and (d) (addressing returns of levied property); IRC § 6015 (providing relief from joint and several liability); IRC § 7122 (providing for the acceptance of offers in compromise of tax liabilities); IRC § 6159 (providing for installment agreements in payment of tax); IRC §§ 7803 and 7811 (providing for assistance from the Office of the Taxpayer Advocate and the issuance of Taxpayer Assistance Orders).

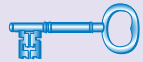
<sup>7</sup> See, e.g., IRC § 6001 (imposing an obligation to retain adequate books and records).

<sup>8</sup> Pub. L. No. 100-647, Title VI, § 6227, (1988); 102 Stat. 3731; IRC § 7521(b)(1).

<sup>9</sup> IRS Pub.1, *Your Rights as a Taxpayer* (May 2005).

<sup>10</sup> *Taxpayers’ rights and obligations – a survey of the legal situation in OECD countries*, Committee of Fiscal Affairs, OECD, 27 April 1990, at <http://www.oecd.org/pdf/M00023000/M00023881.pdf>.

<sup>11</sup> *Taxpayers’ Rights and Obligations – Practice Note 3*, Centre for Tax Policy and Administration, OECD, August 2003.



The OECD also identified certain “behavioral norms” that governments expect of taxpayers and that are essential to the proper functioning of tax administration. These taxpayer responsibilities include:

- The obligation to be honest;
- The obligation to be cooperative;
- The obligation to provide accurate information and documents on time;
- The obligation to keep records; and
- The obligation to pay taxes on time.<sup>12</sup>

In its “Practice Note” based on the findings of this survey, the OECD noted that many countries have developed charters based on these fundamental rights and obligations. It noted that several of these documents specifically state the expectations of conduct by taxpayers and government officials, some consist of “general statements of broad principles”, and still others are detailed explanations of taxpayer rights for each stage of the tax assessment process.<sup>13</sup>

The Canada Revenue Agency (CRA) has adopted and published a Taxpayer Bill of Rights as well as a Commitment to Small Business.<sup>14</sup> Canada’s Taxpayer Bill of Rights consists of fifteen provisions, including the right to have the law applied consistently, the right to expect CRA to be accountable, the right to be treated professionally, courteously, and fairly, and the right to expect CRA to warn you about questionable tax schemes in a timely manner.<sup>15</sup>

Several states, including New York,<sup>16</sup> Pennsylvania,<sup>17</sup> Indiana,<sup>18</sup> Kentucky,<sup>19</sup> Maine,<sup>20</sup> Montana,<sup>21</sup> and Nebraska<sup>22</sup> all have some version of a Taxpayer Bill of Rights. While these charters vary in scope – Montana’s is statutory, Nebraska’s provides its taxpayers with “Freedom from Red Tape” – all contain most of the fundamental components identified by the OECD and several outline taxpayer obligations in addition to taxpayer rights.

<sup>12</sup> *Taxpayers’ Rights and Obligations – Practice Note 3*, Centre for Tax Policy and Administration, OECD, August 2003.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> Canada Revenue Agencies Commitment to Small Business includes the commitment to “administering the tax system in a way that minimizes the costs of compliance for small businesses” and “providing service offerings that meet the needs of small businesses.” at <http://www.cra-arc.gc.ca/agency/fairness/tbrbill-e.html#smb>.

<sup>15</sup> Canada Revenue Agency, Taxpayer Bill of Rights, RC4418 at <http://www.cra.gc.ca/E/pub/ts/rc4418/rc4418-e.pdf>.

<sup>16</sup> N.Y. Tax Law § 3000; see also New York Taxpayer Bill of Rights at [http://www.tax.state.ny.us/nyshome/bill\\_of\\_rights.htm](http://www.tax.state.ny.us/nyshome/bill_of_rights.htm).

<sup>17</sup> 72 Pa. Stat. Ann. § 3310-101 (1996); see also Pennsylvania Taxpayer Bill of Rights at <http://www.revenue.state.pa.us/revenue/cwp/view.asp?A=299&Q=224556> (Jan. 2, 2008).

<sup>18</sup> Indiana Taxpayer Bill of Rights at <http://www.in.gov/dor/reference/rights.html>.

<sup>19</sup> Kentucky Revised Statutes Annotated 131.041-131.081, Taxpayer Bill of Rights; see also Kentucky Taxpayer Bill of Rights at <http://revenue.ky.gov/billofrights.htm>.

<sup>20</sup> Maine Taxpayer Bill of Rights at [http://www.maine.gov/revenue/homepage\\_files/tpbor.htm](http://www.maine.gov/revenue/homepage_files/tpbor.htm).

<sup>21</sup> Montana Codes Annotated 15-1-222; see also Montana Taxpayer Bill of Rights at <http://mt.gov/revenue/formsandresources/taxpayebillofrights.asp>.

<sup>22</sup> Nebraska Taxpayer Bill of Rights at <http://www.revenue.ne.gov/rights.htm>.



## Recommendation 2: *De Minimis* Apology Payments to Taxpayers

There is no present authority for making “apology” payments to taxpayers under U.S. law. However, both the United Kingdom and Australia provide for apology payments to taxpayers.

In the United Kingdom, Her Majesty’s Revenue & Customs (HMRC) maintains a specific policy on “Complaints and putting things right.”<sup>23</sup> The policy permits HMRC to refund reasonable costs caused by mistakes or unreasonable delay and further states that in certain cases of distress or worry, a payment may be made to apologize to the taxpayer.<sup>24</sup>

The Australian government permits claims against the Tax Office to be assessed for legal liability and/or detriment caused by defective administration.<sup>25</sup> If those circumstances do not cover the claim, the taxpayer can seek an act of grace payment from the Department of Finance and Administration,<sup>26</sup> which provides the taxpayer the opportunity to seek compensation for being unintentionally disadvantaged by the actions of the government.<sup>27</sup>

Taxpayers in the U.S. have several means through the judicial system by which to recover certain costs. These remedies are limited and only available under specific circumstances. These remedies include:

- **IRC § 7430-Awarding of costs and certain fees.** Taxpayers who prevail in administrative or court proceedings against the U.S. involving the determination, collection or refund of any tax, interest or penalty may be awarded reasonable administrative and litigation costs where the taxpayer has first exhausted all administrative remedies and has not unreasonably prolonged litigation.
- **IRC § 7431-Civil damages for unauthorized inspection or disclosure of returns and return information.** Taxpayers may seek damages in district court against the U.S. in cases where an officer or employee of the U.S. knowingly or negligently, and without authorization, discloses returns or return information.
- **IRC § 7432-Civil damages for failure to release lien.** Taxpayers may seek damages in district court against the U.S. in cases where an officer or employee of the U.S. knowingly or negligently fails to release a lien under IRC § 6325.
- **IRC § 7433-Civil damages for certain unauthorized collection actions.** Taxpayers who have exhausted administrative remedies may seek damages in the district court against the U.S. in cases where an officer or employee of the IRS, in connection with a collection action, recklessly, intentionally, or negligently disregards any portion or regulation of this Title 26.

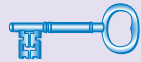
<sup>23</sup> HMRC, *Complaints and putting things right*, at <http://www.hmrc.gov.uk/factsheets/complaints-factsheet.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Australian Tax Office, *Applying for compensation*, at <http://www.ato.gov.au/corporate/content.asp?doc=/content/48904.htm>.

<sup>26</sup> Australian Tax Office, *Claiming compensation*, at <http://www.ato.gov.au/taxprofessionals/content.asp?doc=/content/48878.htm>.

<sup>27</sup> *Id.*



- **IRC § 7433A-Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.** IRC § 7433 applies to situations where the actor is a person performing under a qualified tax collection contract as defined in IRC § 6306(b).
- **IRC § 7435-Civil damages for unauthorized enticement of information disclosure.** In situations where an officer or employee of the U.S. has intentionally compromised the determination or collection of tax due from an attorney, CPA, or enrolled agent representing a taxpayer in exchange for information concerning the taxpayer’s liability, the taxpayer may seek damages against the U.S. in district court.
- **IRC § 7426-Civil actions by persons other than taxpayers.** In a wrongful levy action, any person other than the taxpayer who claims an interest in or lien on the levied property may bring a judicial action against the U.S. for an injunction, recovery of the property or money, or a judgment for the proceeds or fair market value of the property.

Taxpayers who seek assistance from the National Taxpayer Advocate may be eligible for the equitable remedy of a Taxpayer Assistance Order (TAO) under the authority granted to the National Taxpayer Advocate by IRC § 7811. Under IRC § 7811, the National Taxpayer Advocate may issue a TAO when she determines that the taxpayer is suffering or about to suffer a significant hardship due to the manner in which the Secretary or his delegates are administering the internal revenue laws.<sup>28</sup> A significant hardship includes: “an immediate threat of adverse action; a delay of more than 30 days in resolving taxpayer account problems; the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.”<sup>29</sup> In cases where the IRS has failed to follow published administrative guidance (including the Internal Revenue Manual (IRM)), the factors taken into consideration when issuing a Taxpayer Assistance Order are to be construed in the light most favorable to the taxpayer.<sup>30</sup> The TAO is used to require the Secretary or his delegates to act in a case in which the National Taxpayer Advocate has determined the taxpayer is suffering or about to suffer a significant hardship, and may require the Secretary to take an action, cease an action or refrain from taking an action involving the taxpayer.<sup>31</sup>

<sup>28</sup> IRC § 7811(a)(1)(A).

<sup>29</sup> IRC § 7811(a)(2).

<sup>30</sup> IRC § 7811(a)(3).

<sup>31</sup> IRC § 7811(b).



## Reasons For Change

### Recommendation 1: Taxpayer Bill of Rights

While the Internal Revenue Code contains significant rights, protections, and expectations of taxpayers, these provisions are scattered throughout the Code and the IRM. They are not easily accessible to taxpayers, nor are they written in language that is readily understandable by many taxpayers.

IRS Publication 1, *Your Rights as a Taxpayer*, is the primary vehicle for the IRS to tell taxpayers about their rights. Publication 1 is two pages long, with eight sections pertaining to taxpayer rights and four sections pertaining to exam, appeals, collection, and refunds, in ten point font. Its dense language is difficult to navigate, and the rights are not set forth in a way that emphasizes the fundamental principles underlying these rights. As a clear and concise statement of what rights the federal government is bestowing on its taxpayers, and what behavior it expects from those taxpayers in return, Publication 1 falls well short of the mark.

The National Taxpayer Advocate believes that taxpayers will be reassured in the essential fairness of the tax system and more disposed to voluntarily comply with the tax laws if they can see and understand a clear declaration of their rights as taxpayers. As taxpayers understand that specific statutory protections flow from these rights, they will be able to better avail themselves of these protections. IRS employees, in turn, will better understand why these specific protections exist. Moreover, a clear linkage between taxpayer rights and responsibilities will establish expectations of taxpayer behavior that are easily understandable and fulfilled.

Establishing a statutory Taxpayer Bill of Rights will reassure taxpayers that the tax system is essentially fair and just, and inform taxpayers of the treatment they can expect from their government as well as of the behavior the government expects of them. Revising Publication 1 so that it sets forth the Taxpayer Bill of Rights in its entirety and then relates specific statutory protections and obligations to those rights will enable taxpayers to avail themselves of those rights and conform their behavior accordingly.

### Recommendation 2: *De Minimis* “Apology” Payments

The National Taxpayer Advocate believes the authority to make *de minimis* apology payments to taxpayers is appropriate to acknowledge situations where the IRS seriously mistreats a taxpayer, resulting in excessive expense or undue burden to the taxpayer. Faith in the tax system is essential to voluntary tax compliance. The ability to monetarily compensate taxpayers when the tax system has not functioned in an appropriate manner will work to restore taxpayer confidence in that system and encourage future compliance





on the part of taxpayers who may be downtrodden or discouraged by their experience. A monetary apology to a taxpayer who has suffered emotionally and financially due to an improper handling of his or her situation may not make the taxpayer whole, but it will show the ability of the tax system to recognize and try to correct its mistakes. A tax system that is fair and just encourages taxpayer compliance.<sup>32</sup>

Current provisions permitting cost recovery to taxpayers are limited and narrow. Under present law, in order for a taxpayer to recover the costs of prevailing against the IRS, he or she must first exhaust all administrative remedies available, and then, when those options are exhausted and the taxpayer still has not received the outcome he or she was seeking, take the IRS to court and prevail. As demonstrated in the example, *supra*, it can take years for a taxpayer to exhaust his or her administrative remedies, with no final conclusion reached, all for a situation where the IRS itself has caused the problem. Such remedies do not assist a taxpayer, who as a result of IRS action or inaction, is embroiled in a tax situation that takes years and significant expense to unwind. Going to court increases the taxpayer’s costs further and is also expensive for the government.

The rationale for a *de minimis* apology payment to such a taxpayer is not to repay him or her for the time and expense of seeking a remedy, but instead, to serve as a symbolic gesture to show that the government recognizes its mistake and seeks to make amends. This payment would be separate from any other judicial remedy otherwise already provided by current law.

## Explanation of Recommendations

### Recommendation 1: Taxpayer Bill of Rights

The National Taxpayer Advocate recommends that Congress enact a Taxpayer Bill of Rights that sets forth the fundamental taxpayer rights and obligations described below. The National Taxpayer Advocate further recommends that Congress direct the IRS to publish (in print and electronically) the Taxpayer Bill of Rights and, when it contacts a taxpayer concerning the determination or collection of any tax, provide the taxpayer with a written, nontechnical explanation of the Taxpayer Bill of Rights (similar to that set forth below) and the specific protections that derive from these rights during the audit, appeals, refund, and collection processes (including those protections currently described in Publication 1).

#### *Taxpayer Rights:*

- **Right to be Informed:** Taxpayers have the right to know what is expected of them in terms of complying with the tax law. They are entitled to receive clear explanations of the law and IRS procedures in the form of tax forms and instructions, publications, notices, and correspondence, as well as in oral communications. Taxpayers also have

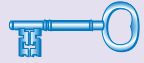
<sup>32</sup> See Marjorie E. Kornhauser, *Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers*, vol. 2, *infra*.



the right to have access to IRS procedures, policies, guidance, and other instructions to staff, to the extent permitted by law. This should include information about protections and procedures under the Freedom of Information Act, the Privacy Act, and IRC § 6110. It also includes clear explanations of the law and IRS procedures, in the form of tax forms and instructions, publications, notices, and correspondence, as well as oral communications. Finally, taxpayers have the right to be informed of the results of and reasons for decisions made by the IRS about their tax matters.

- ***Right to be Assisted:*** Taxpayers have the right to receive prompt, courteous and professional assistance about their tax obligations in the manner in which they are best able to understand it, and to be provided a method to lodge grievances when service is inadequate. Taxpayers have a right to expect that the tax system will attempt to keep taxpayer compliance costs at a minimum and that assistance will be available in a timely and accessible manner and without unreasonable delays.
- ***Right to be Heard:*** Taxpayers have the right to raise their objections and exculpatory evidence in connection with actions taken by the IRS, which shall consider those objections and evidence promptly and impartially. Moreover, the IRS shall provide the taxpayer with an explanation of why those objections or evidence are not sufficient, if it so concludes, and what is required to better document the taxpayer’s concern, where appropriate.
- ***Right to Pay No More than the Correct Amount of Tax:*** Taxpayers have the right to expect that the IRS will apply the tax law “with integrity and fairness to all.”<sup>33</sup> Thus, taxpayers have the right pay only the tax legally due and to have all tax credits, benefits, refunds, and other provisions properly applied.
- ***Right of Appeal:*** Taxpayers have the right to be advised of and avail themselves of a prompt administrative appeal that provides an impartial review of *all* compliance actions (unless expressly barred by statute) and an explanation of the appeals decision. Taxpayers have the right to expect that Appeals personnel will not engage in ex parte communications with IRS compliance personnel except in statutorily permitted circumstances.
- ***Right to Certainty:*** Taxpayers have the right to know the tax implications of their actions and the date and circumstances under which certain actions are final (*e.g.*, the date by which a Tax Court petition must be filed, the applicable statutory or other period of limitation, the circumstances under which there will be second examinations, and the effect of closing agreements and settlements).
- ***Right to Privacy:*** Taxpayers have the right to expect that any IRS inquiry or enforcement action will involve as little intrusion into taxpayers’ lives as possible, will be limited to information relevant to the matter at hand, and will follow all due process

<sup>33</sup> IRS Mission Statement at <http://www.irs.gov/newsroom/article/0,,id=98186,00.html>.

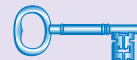


considerations, including search and seizure protections and the provision of a collection due process hearing, where required.

- ***Right to Confidentiality:*** Taxpayers have the right to expect that any information provided to the IRS will not be disclosed by the IRS unless authorized by the taxpayer or other provision of law. Taxpayers also have the right to expect that the IRS will conduct appropriate oversight over those who assist in tax administration (tax preparers, tax software providers, electronic return originators) to ensure that taxpayer and tax return information is protected from unauthorized use or disclosure.
- ***Right to Representation:*** Taxpayers have the right to be represented in contacts, transactions, and controversies with the IRS by an authorized representative of their choice. Taxpayers have the right to expect that the IRS will conduct appropriate oversight over these representatives and inform taxpayers about improper conduct or practices by such representatives. Moreover, taxpayers who do not have the means to afford representation have the right to expect that the IRS will inform them of the availability of Low Income Taxpayer Clinics (LITCs) and Student Tax Clinics that provide such representation for free or for a nominal charge.
- ***Right to a Fair and Just Tax System:*** Taxpayers have the right to expect that the tax system will take into consideration the specific facts and circumstances that might affect their underlying liability, ability to pay, or ability to provide information timely (e.g., by abatement of tax, penalty or interest; offers in compromise, or installment agreements; or extensions of time to file or submit information, unless statutorily prohibited). Taxpayers have the right to receive assistance from the Office of the Taxpayer Advocate in resolving problems with the IRS. Taxpayers have the right to “apology” or other compensation where the IRS has excessively erred, delayed, or taken unreasonable positions or where otherwise authorized by statute.

#### ***Taxpayer Obligations include:***

- ***Obligation to be honest:*** Taxpayers have the obligation to accurately report their income, deductions, and credits according to the law; to answer all questions completely, accurately, and honestly; and to explain all relevant facts and circumstances when seeking guidance from the IRS.
- ***Obligation to be cooperative:*** Taxpayers have the obligation to treat IRS personnel with courtesy, professionalism, and respect.
- ***Obligation to provide accurate information and documents on time:*** Taxpayers have the obligation to take reasonable care in preparing all required returns and other required information, to file all required returns timely and at the appropriate location, and to provide all required information within the requested time period.
- ***Obligation to keep records:*** Taxpayers have the obligation to maintain adequate books and records that enable them to fulfill their tax requirements, to preserve them for the period during which they may be subject to inspection by the IRS, and to provide the



IRS access to those books and records for the purpose of examining their tax obligations, to the extent required by law.

- ***Obligation to pay taxes on time:*** Taxpayers have the obligation to pay the full amount of taxes they owe by the required due dates, to pay in full any additional assessments, and to comply with all terms of any installment agreements or offers in compromise mutually agreed to when a taxpayer does not have ability to pay the liability in full.

The National Taxpayer Advocate believes that if taxpayers are informed about their rights and responsibilities under the tax law, they will be better able to comply. A Taxpayer Bill of Rights serves as the foundation for all other rights of taxpayers and the behavior expected of taxpayers. By becoming part of the fabric of tax administration, it is perhaps the most effective document for advising taxpayers of the existence of these rights and responsibilities and ensuring that the tax administrator expects them.

### Recommendation 2: *De Minimis* Apology Payments

The authority to make *de minimis* apology payments to taxpayers is a mechanism that would help restore taxpayer faith in the tax system when a taxpayer has been seriously mistreated by the IRS. This authority, vested solely in the National Taxpayer Advocate, would be nondelegable. The National Taxpayer Advocate, at her discretion, would be authorized to make a *de minimis* payment to a taxpayer where the taxpayer has incurred excessive expense or experienced undue burden as a result of an IRS mistake, action, or failure to act. The National Taxpayer Advocate’s decision with respect to an award under this authority would not be appealable or reviewable. To be eligible for such a payment, the taxpayer would have to meet established criteria. Payments would only be awarded in cases that meet the definition of significant hardship in IRC § 7811, and additional criteria could be described in regulations or other guidance.

A payment under this authority would not exceed \$1,000 and would be paid from the IRS general appropriations fund. The Secretary of the Treasury would allocate no more than \$1 million per year for this purpose, unless otherwise provided by specific appropriation and would issue regulations in accordance with this authority. The IRC should be amended to specifically exclude these payments from gross income.

The National Taxpayer Advocate believes that the ability to make a *de minimis* apology payment to taxpayers in situations where the taxpayer experiences excessive costs or undue burden due to gross mistreatment by the IRS is an important aspect of taxpayer service. Such payment is a symbolic acknowledgement of the government’s error and the taxpayer’s resulting burden, and enhances taxpayers’ perception of the tax system as just and fair. The National Taxpayer Advocate could also include a general description of apology payments authorized during the preceding year in her annual reports to Congress, which would keep Congress apprised of both the nature of significant IRS errors and areas that might warrant congressional attention.